



IRA A. JACKSON
COMMISSIONER

The Commonwealth of Massachusetts

Department of Revenue

Leverett Saltonstall Building,

100 Cambridge Street, Boston 02204

January 13, 1983

You inquire about the application of the sales and use taxes to purchases of items that will be incorporated into a solid waste disposal facility ("Facility") to be constructed in Massachusetts. The Facility will burn solid waste and use the heat of combustion to generate electricity.

("Contractor") will build the entire Facility and then transfer it to ("Owner/Operator")

The land on which the Facility will be built will be leased to the Owner/Operator by the Commonwealth of Massachusetts.

The Facility will process solid waste as follows. Raw refuse will be brought to the Facility in trucks, weighed and dumped into a pit. Two cranes running along a bridge above the pit will feed the refuse into chutes. The chutes will lead to a furnace, where the refuse will be burnt on reverse reciprocating stokers that will agitate the waste to ensure efficient combustion and carry the residue to ash dischargers. The residue will then be conveyed to a materials recovery building, where it will pass through a ferrous metal recovery system consisting of conveyors, a screen for removing oversized items, and a magnetic drum separator.

Gases from combustion of the residue will be directed through two boilers to produce steam. The steam will be used principally to power a turbine-generator, but some of it may be diverted for sale in kind to industrial users.

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The electricity produced by the turbine-generator will flow to a 13.8/23 KV transformer and then to a switchyard where it will be connected to the distribution system of the

which will purchase all of the Facility's net electrical output for twenty years.

After combustion gases have passed through the boilers, particulates will be removed by electrostatic precipitators, and the gases will be discharged through a stack.

From the turbine-generator, steam will pass to a condenser, where it will be converted back to hot water. The hot water will then be returned to the boilers.

The Facility will include a bypass condenser for use when the turbine-generator is not operating.

A "cooling water loop" will be used to control the temperature of the condensers and certain other machinery. After cooling the machinery, water in the loop will be circulated through a multi-cell, induced mechanical draft cooling tower constructed of Douglas fir and including a concrete basin, drift eliminator, electric motor, fan and fan stack.

It is expected that the ferrous metal recovered from the residue will be sold as scrap. Markets may arise for other parts of the residue (as, for example, in road surfacing applications). Whatever residue is not sold will be trucked from the Facility to a land fill.

Revenues attributable to operation of the Facility will come from sales of electricity, service fees assessed against participating communities for processing their waste, user fees charged other disposers of solid waste, and sales of ferrous metals and other marketable products, if any, recovered from the combustion residue. Receipts from sales of electricity are expected to comprise over 50 per cent of the Facility's operating revenues.

The particular items about which you inquire are the following: the cranes, stokers and boilers and their "ancillary equipment," the turbine-generator and its ancillary equipment, the condensers, the cooling tower and other parts of the cooling water system, the electrostatic precipitators and the stack, the electrical switchyard, and the components of the ferrous metal recovery system. You state that some of the items may be purchased as component parts and thereafter assembled by the Contractor or its subcontractors.

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General Laws Chapter 64H, Section 2 imposes the sales tax on sales at retail of tangible personal property by any vendor; "sale at retail" is defined in Section 1(13) as a sale of tangible personal property for any purpose other than resale in the regular course of business.

A contractor who purchases materials from a retailer for use in building construction is generally considered the consumer of the materials and not a purchaser for resale for sales and use tax purposes. Seltzer and Co., Inc. v. State Tax Commission, ATB Docket Nos. 68886, 68887 (1975), aff'd sub nom. Ace Heating Service, Inc. v. State Tax Commission, 371 Mass. 254 (1976); Salem Glass Co. v. State Tax Commission, ATB Docket No. 60903 (1974); State v. J. Watts Kearny & Sons, 181 La. 554 (1935); see Town of Saugus v. B. Perini & Sons, Inc., 305 Mass. 403 (1940).

Chapter 64H, Section 6(s) provides an exemption for sales of machinery or replacement parts thereof used directly and exclusively in an industrial plant in the actual manufacture, conversion or processing of tangible personal property to be sold or in the furnishing of gas, water, steam or electricity when delivered to consumers through mains, lines or pipes.

For purposes of Section 6(s), "industrial plant" means a factory at a fixed location primarily engaged in the manufacture, conversion or processing of tangible personal property to be sold in the regular course of business.

Based on the foregoing, it is ruled that:

1. The transfer of the Facility from the Contractor to the Owner/Operator will not be subject to the sales or use tax.
2. Neither sales nor use tax will apply to purchases by the Contractor or its subcontractors of the cranes, stokers, boilers, turbine-generator, condensers, electrostatic precipitators, electrical switchyard, components of the ferrous metal recovery system, or the machinery that forms part of the Facility's cooling water system (including the electric motor and fan in the cooling tower).
3. Purchases by the Contractor or its subcontractors of ancillary equipment for the cranes, stokers, boilers and turbine-generator will be exempt from the sales and use taxes provided that such equipment is an adjunct or attachment necessary for the basic unit to accomplish its intended function, or a device used or required to control, regulate or operate the basic unit and directly connected with or an integral part of the basic unit.

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4. The sales or use tax will apply to purchases by the Contractor or its subcontractors of building materials to be incorporated into the Facility, including the materials from which the stack and the cooling tower structure will be built.

Very truly yours,

A handwritten signature in dark ink, appearing to read "L. A. Jackson". The signature is written in a cursive style with a large, prominent "J" and "A".

Commissioner of Revenue

IAJ:JXD:mf

LR 83-7